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FROM: Daniel Musgrove

DATE: August 22, 2008

RE: DOCKET NO. E-01345A-08-0254

2008 AUG 22 P 1:49

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ORIGINAL

ARIZONA PUBLIC SERVICE COMPANY'S ("APS") REQUEST FOR
CLARIFICATION OF BIOMASS THERMAL ENERGY PURSUANT TO
THE RENEWABLE ENERGY STANDARD RULES

Daniel Musgrove, on behalf of Universal Entech, LLC and myself ("I" and/or "We"), hereby submit the following Comments to the Recommended Opinion and Order ("Recommended Order") filed in the above docket on August 8, 2008, to the Comments of Arizona Public Service ("APS Comments") filed in the above docket on August 20, 2008, and to the original Request for Clarification ("Request for Clarification") filed in the above docket on May 20, 2008.

BACKGROUND

As an Arizona-based company in the organic recycling and waste management industry, Universal Entech viewed the original ACC Environmental Portfolio Standard ("EPS") as a public policy which impacted our future business. Therefore, we began to get involved in the state's renewable energy policy process, including the EPS Rule process, back in the first quarter of 2002. This included me volunteering to chair the ACC Staff's technical committees responsible for developing technical specifications for eligible biogas and biomass projects.

Throughout 2002 - 2007, We actively participated in the vetting of EPS modifications and other key policy issues surrounding the development and subsequent passing of the current Renewable Energy Standard and Tariff Rule ("REST Rule"). This included accepting an invitation by ACC Staff to be the voting member of the Uniform Credit Purchase Program ("UCPP") working committee representing the biogas and biomass energy industry. I collaborated and consulted with many stakeholders in the biogas and biomass energy industry and represented those industry positions during the final REST Rule formation process.

We are providing the following comments as an Arizona-based company directly impacted by the outcome of this Recommended Order and as an individual intimately involved in the process leading up to this docketed Request for Clarification. While I have been in contact with and consulted with other biogas and biomass industry stakeholders, the following comments are not on behalf of the biogas or biomass energy industry as a collective group.

COMMENTS

- 1 We concur with ACC Staff ("Staff") and APS and believe that the Drake Cement Company's proposed biomass thermal system would provide environmental benefits as well as a low cost method of employing renewable energy technologies, hence the

potential for reducing overall REST Program costs. We support the development of the Drake Cement Company's proposed system and we believe it is an Eligible Distributed Renewable Energy Resource within the definitions of the REST Rule and within the spirit and intent of the REST Rule. Therein, we agree with Staff's Finding of Fact 10 in the Recommended Order.

- 2 We do not agree with APS's assertion in their original Request for Clarification that; "it does appear that the RES Rules *may contemplate* renewable heat applications. (emphasis added) We strongly assert that the RES Rules do contemplate and clearly intend to include renewable heat applications.

APS, themselves, argue this point in their Request for Clarification by pointing out that and stating; "A renewable combined heat and power system, which produces both electricity and useful renewable process heat, is defined by the REST Rules as a distributed renewable energy resource and is eligible for REST incentives. With the combined heat and power application, *both the electricity and the renewable process heat* count towards the REST Rules distributed renewable energy requirement." (emphasis added) The specific language is addressed in R14-2-1802(B)(5).

Secondly, the REST Rule clearly states in R14-2-1802(B)(2) that;

"Biomass Thermal Systems" and "Biogas Thermal Systems" are systems which use fuels as defined in subsections (A)(1) and (A)(2) to produce thermal energy..." (underscore added).

Thirdly, the eligibility, and the intent and spirit, of allowing biomass and biogas thermal energy systems is no different than the eligibility offered and provided to;

- Commercial Solar Pool Heaters (R14-2-1802(B)(3)),
- Geothermal Space Heating and Process Heating Systems (R14-2-1802(B)(4)),
- Solar Heating, Ventilation, and Air Condition (R14-2-1802(B)(7))
- Solar Industrial Process Heating and Cooling (R14-2-1802(B)(8))
- Solar Space Cooling (R14-2-1802(B)(9))
- Solar Space Heating (R14-2-1802(B)(10))
- Solar Water Heaters (R14-2-1802(B)(11))

Finally, We believe that "thermal energy" eligibility is clearly intended and completely contemplated by the Commission due to the simple fact that Staff and the Commission included REST Rule R14-2-1803(B):

"For Distributed Renewable Energy Resources, one Renewable Energy Credit shall be created for each 3,415 British Thermal Units of heat produced by a Solar Water Heating System, a Solar Industrial Process Heating and Cooling System, Solar Space Cooling System, Biomass Thermal System, Biogas Thermal System, or a Solar Space Heating System." (Emphasis added)

- 3 We believe that APS's position and stated uncertainty "whether this particular biomass thermal application would be eligible for REST incentives", is too narrow and selective.

If APS truly takes a position of "uncertainty", then that uncertainty must be applied to all other eligible Distributed Renewable Energy Resources covered under (R14-2-1802(B) which do not clearly displace Conventional Energy Resources that "would" otherwise be used to provide electricity to Arizona customers. (Emphasis and 'double' Emphasis added).

For example, if a contemplated Commercial Solar Pool Heater project is currently using a natural gas heater (which is not making electricity at the time), would it be eligible under the REST Rule? We believe the intent and spirit of the REST Rule is to allow full REC eligibility for any eligible Distributed Renewable Energy Resource which displaces Conventional Energy Resources that "are or could be" used to provide electricity to Arizona customers.

Our position is that the REST Rule's intent and spirit was to displace the use of Conventional Energy Resources with clean, environmentally-friendly and diverse Eligible Renewable Energy Resources and Distributed Renewable Energy Resources.

We believe that it might appear that APS, and Staff, are hung up on the use of the word "would" or phrase "would otherwise". Our position and comment is that the REST Rule's intent and spirit can be maintained by reading R14-2-1802(A) and 1802(B) with the words; "are or could be" otherwise used to provide electricity...

- 4 We agree with APS' and Staff's inclusion of, and importance of, referencing REST Rule R14-2-1802(D), which states;

"...shall be Renewable Energy Resources that produce electricity, replace electricity generated by Conventional Energy Resources, or replace the use of fossil fuels with Renewable Energy Resources." (underscore added)

We believe this language supports our assertions made in Comment 3 above. We contend that the intent and spirit of the REST Rule was to replace or "displace the use of fossil fuels with Renewable Energy Resources". Displaced fossil fuels used for a thermal application or project are now freed up to be used for other applications, whether it be generating more electrical capacity, producing additional thermal loads or even transferring into the higher value use such as transportation fuels.

Either way, a Renewable Energy Resource is being developed and utilized to add diversity to our energy mix, to reduce our dependence on fossil fuels (most of which are imported into Arizona) and to address clean air and other beneficial environmental and economic concerns facing Arizona customers.

- 5 We do not support or agree with Staff's Finding of Fact 8 in the Recommended Order that states; "(it) appears to preclude the project as a Distributed Renewable Energy Resource". Our points and reasons for this disagreement are stated above.

6. We do not agree with Staff's Finding of Fact 9 and Staff's recommendation that APS place the Drake Cement Company's proposed project into a Pilot Program, under R14-2-1802(D). We believe the above comments and arguments state our counter position.
7. We agree with Staff's Finding of Fact 12 and concur that the Drake Cement project (as presented in the Request for Clarification and outlined in Finding of Fact 3 and 11), does pose a potential to "crowd out" other non-residential distributed projects. We agree that this result could very well thwart the Commission's intent of encouraging a broad list of distributed energy projects, spread throughout the APS Distribution System.

We believe this potential crowding out situation does pose a "risk" to other competing non-residential distributed projects. However, this situation directly addresses the Commission's intent to encourage the development of the least cost and most beneficial Renewable Energy Resources and renewable projects – whether distributed or not.

8. We do not agree with Staff's Finding of Fact 14, in that we do not agree with Staff's recommendation to the Commission to direct APS to establish a Biomass Thermal Energy System Pilot Program. In doing so, Staff and Affected Utilities will be obligated in the future to establish other Pilot Programs for similar renewable energy projects that fall under the same 'perceived uncertainty' circumstances.
9. We believe the Commission has the authority and the flexibility to address this "potential crowding out situation" by utilizing its Waiver Rights as provided in REST Rule R14-2-1816.

We believe that APS has the right to count the entire RECs from the Drake Cement project under its non-residential distributed renewable energy requirement, as an eligible Biomass Thermal System.

We believe that APS has the right to request the Commission permission to count portions of the resulting RECs in their non-distributed renewable requirements or in their residential distributed renewable requirements.

We also believe that the Commission has the right to waive provisions and grant permission to requested allocations by APS, or any other Affected Utility found in similar situations in the future.

Respectfully,



Daniel Musgrove
Universal Entech, LLC
Director of Business & Technology Development